IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 11TH JUNE 2007 / 21ST JYAISHTA 1929

WP(C).No. 12650 of 2004(E)

PETITIONER:

ABDUL MAJEED, S/O.AHAMMED MYTHEEN,
THANNIMOOTTIL HOUSE, KULASEKAHARPATHI,
PATHANAMTHITTA.

BY ADV. SRI.TOMY SEBASTIAN

RESPONDENTS:

1. STATE OF KERALA REP. BY THE CHIEF SECRETARY TO THE GOVERNMENT, THIRUVANANTHAPURAM.

2. AHAMMED KANNU, AZHA MUGHAL HOUSE, PAZHAVATHU, CHANGANASSERY.

3. ISHA BEEVI SYED MOHAMMED, ALIEAS K.S. ISHA BEEVI, AZHA MAGHAL HOUSE,PAZHAVATHU, CHANGANASSERY.

4. AHAMMED MYTHEEN MUHAMMED ISMAIL, THANNIMOOTTIL HOUSE, KULASEKAHARAPATHI, PATHANAMTHITTA.

5. AHAMMED MYTHEEN KULSEEM BEEVI, THANNIMOOTTIL HOUSE, KULASEKARAPATHI, PATHANAMTHITTA.

6. AHAMMED MYUTHEEN MEHAMOOD BEEGUM, THANNIMOOTTIL HOUSE, KULASEKHARAPATHI, PATHANAMTHITTA.

7. AHAMMED MYTHEEN SHUADU BEEGUM, THANNIMOOTTIL HOUSE, KULASEKHARAPATHI, PATHANAMTHITTA.

R1 BY ADV. SRI.SHYSON P. MANGUZHA, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF THE IA NO.1889/03 IN OS NO.516/96.

EXT.P2 : TRUE COPY OF THE AFFIDAVIT FILED IN SUPPORT OF EXT.P1.

EXT.P3 : TRUE COPY OF THE IA NO.1794/03 IN OS NO.516/96.

EXT.P4 : TRUE COPY OF THE AFFIDAVIT FILED IN SUPPORT OF EXT.P3.

EXT.P5 : TRUE COPY OF THE ORDER IN IA NO.1794/03 AND 1889/03 IN OS NO.516/96.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 12650 OF 2004

Dated this the 11th day of June, 2007

JUDGMENT

Ext.P5 order by which an application filed by the petitioners for re-marking certified copies of documents which were originally marked as Exts.A1 to A12 was dismissed is under challenge. Ext.P5 is the common order issued by the court on two applications filed by the petitioner-plaintiff containing substantially the same prayers. According to the petitioners after the documents were marked, there was an appeal before the District Court, Kottayam against the order of the Court dismissing an application for interim injunction as CMA No.34/97 and against the judgment in the CMA, CRP No.2705 of 1998 was filed before this Court and during the pendency of CMA and CRP the trial of the suit stood stayed. Later a more comprehensive suit, OS No.30/67 was filed by the petitioner and the original of the documents which were marked, were got back on an application for production in that suit. OS No.30/67 was decreed and now the final decree in that suit is being executed. The originals of Exts.A1 to A12 are in the records of the execution proceedings relating to OS No.30/67. The instant application was filed when the trial of the suit resumed after dismissal of the CRP by this Court. The learned Munsiff under Ext.P5 order dismissed both the applications. Even though the respondents have been served with

notice, they have not come forward to resist the prayers in the Writ Petition.

2. Heard Sri.Tomy Sebastian, counsel for the petitioner.

3. I have gone through Ext.P5. The view taken by the court below in Ext.P5 can be said to be correct at least technically. But at the same time the fact remains that at least six of the documents marking of which was sought for by the petitioner were documents issued as true copies of the originals by the court which is presently in custody of the original. The learned Munsiff should have permitted the marking of at least six documents, in my opinion.

3. Therefore, setting aside Ext.P5 and allowing the writ petition, there will be a direction to the court below to mark all certified copies after ensuring that the certified copies have been certified to be true copies of the originals by the Court which is the present custodian of the originals. It is made clear that the petitioner will get the benefit of this judgment only if the trial of the suit is not yet over. There was no stay from this Court and there is a possibility of the suit itself has already been disposed of.

The Writ Petition is allowed to the above extent. No costs.

PIUS C. KURIAKOSE, JUDGE

btt